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EXAMINER
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GORDON, BRIAN R

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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08/12/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,377	<b>Applicant(s)</b> SUOVANIEMI ET AL.	
	<b>Examiner</b> Brian R. Gordon	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 22, 2010 has been entered.

***Election/Restrictions***

2. Newly submitted claims 12-21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims are directed to a different invention not previously included. The new claims do not include the specific primary and secondary means of the claims previously examined. Had the claims been present at the time of initial examination the claims would have been restricted from the previously examined claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12-21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Response to Arguments***

1. Applicant's arguments filed May 24, 2010 have been fully considered but they are not persuasive.

As to the 112, first paragraph, rejection applicant asserts the invention is enabled by paragraphs [0001], [0002], [0006], [0007], [0017], and [0018]. Applicant is only entitled to what he/she discloses as his invention in the specification. Paragraphs [0001], [0002], and [0006] are directed to the state of the prior art and weaknesses and problems with the prior art. Those paragraphs are not directed to applicant's invention. Paragraph [0017] does describe a pipettor that requires a motor. The following paragraph refers to a hand-held mechanical pipettor does not mean the motor is excluded (see applicant's own paragraph 0026). The paragraph doesn't state a motor is not included in the device. Just because a pipettor can be held in an operator's hand doesn't mean it can't include a motor. In fact it should be noted that paragraph [0018] states "Another embodiment is **a hand held mechanical pipettor where the present invention is utilized**. In a mechanical pipettor the activation of an energy means can be carried out for example similarly as described above during a downward movement of a plunger, which movement can be for example a blow-out movement." In other words what is disclosed as applicant's invention can be incorporated in a hand held pipettor. Applicant's entire invention is disclosed in paragraphs [0019-0026], with paragraphs [0023-0026] providing the detailed description of the invention. The motor is mentioned in every paragraph of the description except [0024]. Clearly, the motor is essential to the functioning of the device. The specification does not describe or

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illustrate how one would make/use a separate embodiment of the invention that excludes a motor as asserted by applicant.

Furthermore, it should be noted that the specification and claims do not state what specific structural component(s) define the primary means or any what one considers as an equivalent thereof. What component(s) is disclosed as has having the function of the claimed primary means? It should be noted that the motor, shaft, and plungers 6 and 7 are disclosed as being employed during the use of the pipettor for suction, however none of the elements are described as control the speed of the plungers. While the specification may discuss the desire for the suction speed to be slow, there is no specific element claimed disclosed that actually determines or performs the suction speed. As such, how can one state the means are different when the specification does not describe a primary means as claimed.

There is no mention that the first and second speeds have to be different. At best the specification describes receiving such as slowly and removal movement as high speed. However, the terms "slow" and "high" are relative and subjective. There is nothing that states the removal movement speed of the plunger is greater than the suction movement of the plunger.

If applicant disagrees, it is hereby requested that applicant provide a detailed explanation of where each and every element/amendment is supported within the original specification.

As to claim 4 and 11 (and any other claim reciting a flange), the examiner maintains the position that the specification does not disclose the device as including a

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flange. The term "flange" is not mentioned in the specification. However, applicant attempts to rely on the figures and arbitrarily selected a term to describe what applicant opines to be an illustrative a flange. The examiner understands applicant's explanation of the upper response. As such, if applicant is referencing the element 5 which is the upper response, then claim should be amended to incorporate the same terminology that is consistent with the specification.

As to claim 6, an apparatus is defined by the components listed the body of the claim after the transitional phrase ("comprising"). The elements listed in the body of claim 6 are the same as that of claim 1. Claim 6 does not require any additional structural components to that of claim 1. Claim 6 merely refers to the same components of claim 1 by a different name. It should be noted that any dispenser that includes multiple structures can be referenced as conduits, capillaries, channels, passageways, etc. can be broadly characterized as "multiple-channeled". However, the examiner fails to locate where the instant invention is described as including such limitations.

Applicant asserts that multiple channel pipettors are well known in the art. The test for adequacy, sufficiency, and enablement of a disclosure is not what is well-known and obvious to one of ordinary skill in the art. If that were the case, every applicant would be able to claim/add an infinite amount material that is not is disclosed in the originally filed specification. As previously, stated applicant is only entitled to claim what applicant has disclosed. Here a multiple-channel liquid dispenser is not disclosed in applicant's originally filed application.

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Claim 7 has been amended to recite that the primary means can be driven manually. However, applicant failed to specify where the amendment is supported within the original specification. Furthermore, applicant has not identified what specific element controls the plunger as claimed. It unclear what is manually driven. If the primary means controls the speed of the plunger, then how exactly does a manual operator drive the primary. Furthermore, if the means is manually driven then would that not mean that the operator ultimately controls the speed of the plunger?

Applicant asserts the references do not disclose primary and secondary means. It should be noted that the specification or claim 1 does not define what specific structure applicant considers equivalent to the respective means. In fact the terms "primary" and "secondary" means are not found in the specification. The only description of a means is found in paragraphs 0015-0016. It is assumed that the means described therein is equivalent to the secondary means. However, it is unclear what specific elements define the "primary means".

Applicant has elected to employ 112 6<sup>th</sup> paragraph, means-plus-function language. As such, it is not required that the prior art references disclose the same structural element applicant intends to be equivalent to such means nor is it required that the prior art explicitly recite that an element equivalent to the means have the same exact function as recited in the means-plus-function language of the claim. Applicant's arguments are directed to intended use rather than structural distinctions. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art

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apparatus satisfying the claimed structural limitations. It is only required that an equivalent element be structurally capable of performing the function. Applicant's respective means as claimed is/are merely structure that allows for the plunger to be moved for suction and dispensing, respectively.

As to Berteloot, applicant asserts the reference does not disclose the primary and secondary means as claimed. Applicant asserts the reference discloses the piston as being used in a manner entirely different from a suction movement. As previously stated, applicant has elected to employ means-plus-function language to describe the respective means and neither means is limited to any specific structure within claim 1. Furthermore, the primary means are not limited to any specific structure within the specification and claims. As such, it is not required that the reference disclose structure that used to achieve the same exact functions of the means. It is only required that the same prior art disclose structure that is capable of being used for the same function of the respective means. As such, as long as the prior art discloses at least two elements that can somehow be used to influence the speed of the movement during suction and dispensing, the reference would be considered to be structurally equivalent to the respective means. As seen in figure 1 at the end of element 24 is a structure that contacts the internal wall of the pipette and controls the movement of rod 20 which also resides therein. Also at the top end of the piston as shown therein is a knob. The rod may be considered equivalent to the suction plunger and there is nothing precluding anything (including the above mentioned structures) that influence the speed of the retraction/suction movement of the rod from being considered equivalent to the claimed



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primary means. A user, if he/she chooses to do so can use such elements to control the suction speed of the rod. As pointed out by applicant the claim is not limited to a totally automated dispenser where the elements are linked to a controller the controls the suction and dispensing of liquid from the device. The equivalent secondary means of Berteloot was previously defined in the prior Office Action and herein below.

Applicant's arguments are based upon the intended use of the structure rather than the actual structure itself. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The structure is not required to be disconnected in order to perform and suction. Retraction of the rod would create suction pressure such that liquid or air is sucked upwards in the device.

Furthermore, the instant application states "Electrical hand held pipettors are known to have such adjustment possibilities that the movement of the plunger can be adjusted using programs. This intrinsically is obvious for a person skilled in the art through experimentation so that an optimal movement speed can be achieved for the plunger." [0014]. "After what is said here it is obvious for a person skilled in the art that the mentioned removal movement speed can be achieved with several different ways." [0015]. The broad recitations of the respective means were obvious at the time of the invention as acknowledged by applicant.

In view of applicant's remarks the previous 102(b) rejection of claims 1, 2, and 5-10 under Burgisser is hereby withdrawn.

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However, the reference is prior art under 102(a) or (e). In view of the remarks above, there is nothing which precludes one from consider the bar 8, spindle 1a, rod 7, element 9, or control device 17 from being equivalent to the primary means as claimed.

In view of such the claims are hereby rejected as given herein.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The motor is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The specification states the device is and electric pipettor including a motor. However, no motor or any other electrical component is claimed. It is unclear how the device can function without the motor. The amendments and structure of the device as claimed is not disclosed in the specification. See Response to Arguments.

4. Claims 4, 6, and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims have been amended. However

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applicant has failed to specify where the amendments are supported within the original specification. The examiner fails to locate where "an upper flange" is disclosed in the original specification as an element of the claimed invention. Furthermore, the specification does not disclose a device including a "primary means" as included in the claims. What are the different specific claimed means? See also Response to Arguments.

The specification does not provide for the device including multiple channels.

5. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a single liquid dispenser, does not reasonably provide enablement for the device comprising multiple channels. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The specification does not provide any explanation of how multiple channels are incorporated within the device as claimed.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 4-5, 7-8, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what specific element is equivalent to the "primary means" as claimed. According to the claim, it is an element that determines controls the suction

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movement of the suction plunger. There is no such element described in the specification. Claim 5, states that the motor drives the primary means. However, applicant fails to specify where the amendment is supported in the specification. If the motor performs that the driving then what other component controls the suction speed?

As to claim 4, it is unclear how the device can operate as claimed when no flange is disclosed in the specification.

Claim 7 does not add any additional structure to the dispenser. The claim merely recites the liquid dispenser can be held in a hand.

Claim 11 recites "when receiving the sample" and "when dispensing the sample", it is unclear if this is in reference to the receiving and dispensing in claim 8.

Applicant may want to consider amending the claim to recite "wherein receiving the sample into the tip comprises moving...wherein dispensing the sample from the tip comprises moving..."

### ***Specification***

#### **Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR

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1.71(g).

- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in

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37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

The specification is missing the headings "Brief Description of Drawings"

### ***Claim Interpretations***

8. It is noted applicant that has chosen to employ means-plus-function language in reference to the primary and secondary means. It is not required that the prior art disclose any specific structure. It is only required that the prior disclose respective

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different structures that can be employed to achieve the respective functions of each means. In the subsequent dependent claims the secondary means is limited to specific components. However, the primary means is not mentioned in the specification nor limited to any specific structure within the dependent claims.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

***Claim Rejections - 35 USC § 102***

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Berteloot et al., US 5,330,717.

Berteloot et al. discloses electropneumatic apparatus for sampling rapidly predetermined volumes of a mixture. The device is an injector 2 that comprises a rod 20 having an end inserted into the pipette 18 for ejecting the first reagent out of the pipette 18 by driving the rod 20 into the pipette 18. A piston device (plunger) is provided. It is mounted on top of the pipette holder 16. This piston device includes a piston cylinder 22 (cylinder in body), a piston 24 disposed inside the cylinder 22, and a return spring 26

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(energy means) for biasing the piston 24 toward the rod 20. A pin 28 is provided for locking the piston 24 in a position where the return spring 26 is compressed, whereby a user can activate the injector 2 to eject the first reagent out of the pipette 18 into the reactor 4 by removing the pin 28 (secondary/locking/launch means).

11. Claims 1 and 5-8 are rejected under 35 U.S.C. 102(b) or (e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over applicant admission and acknowledgement of the state of the prior art.

Applicant discusses the state of the prior art in paragraphs [0012-0015].

Applicant admits that the electrical hand held pipettors previously exist and that these prior pipettors have structure that allows for the speed of the plunger movement to be controlled for receiving and removal phases. In view of such, the examiner asserts the claims are anticipated by the admission.

In the alternative, applicant further states that it would be obvious to one of ordinary skill in the art to adjust of the speed of the plunger to obtain optimal movement speed. As such, the claims are obvious in view of the prior art as admitted by applicant.

12. Claims 1-2 and 5-10 are rejected under 35 U.S.C. 102(a) or (e) as being anticipated by Burgisser US 2005/0214172.

Burgisser discloses a device and method to meter and dispense very small volumes (lower limit of up to 10 nl) of a liquid to be dispensed in an accurate and reproducible manner, surprisingly even when using a syringe with a conventional, motor-driven syringe plunger. Therein, the volume which is dispensed from the tip or is displaced by the syringe plunger respectively consists of two part volumes, namely the



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drawn-up and then dispensed gas volume and the dispensed liquid volume. During dispensation of the gas volume the syringe plunger is able to be accelerated to a high plunger speed which is necessary for the liquid volume to be accelerated to a flow speed or exit speed respectively being required for overcoming the adhesion forces. An electric motor, preferably a commercially available, inexpensive electric motor is perfectly suitable as a motor-drive. (paragraph 0009).

The combination of the motor and other components has the functions of energy means, locking means, and launching means.

***Claim Rejections - 35 USC § 103***

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berteloot et al. as applied to claims 1-2 and 5-7 above, and further in view of Rainin et al. US 6,352,673.

Berteloot et al. does not disclose a magnet as a locking means.

Rainin et al. discloses a pipette in which includes an iron or steel ring 113 secured to a top of the plunger 24 and a ring magnet 114 secured to an underside of a top of the pipette body 12 around the access opening for the upper portion 26 of the plunger unit 16. Thus constructed, as the plunger unit 16 approaches the upper stop 18, the magnetic field generated by the magnet 114 attracts the ring 113 to releasably secure the ring to the magnet and the plunger unit at the upper stop 18.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to recognize the device of Berteloot et al. may be modified to include the magnetic locking mechanism of Rainin et al. to secure the plunger at the upper position.

15. Claims 3-4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgisser as applied to claims 1-2 and 5-10 above, and further in view of the of combined teachings Berteloot et. and Rainin et al.

Burgisser et al. does not disclose a spring and magnet as claimed.

However Berteloot et al. discloses a spring energy means for moving a plunger/piston during dispensing and Rainin discloses the use of a magnetic locking means to secure a plunger in place (see teachings recited herein above).

It would have been obvious to one of ordinary skill in the art at the time of the invention to recognize the dispensing device of Burgisser may be modified to include an energy and locking means as taught by Berteloot et al. in view of Rainin in order to releasably secure provide movement of the plunger during dispensing.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/  
Primary Examiner  
Art Unit 1797